

EXHIBIT F

Declaration of Philip P. Mann

Case No. 21-CV-0817-TSZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BUNGIE, INC., a Delaware corporation,)	
)	
Plaintiff,)	CASE NO. C21-00881-TSZ
)	
v.)	
)	Seattle, Washington
PHOENIX DIGITAL GROUP LLC, an)	
Arizona limited liability company;)	May 23, 2024
JEFFREY CONWAY, an individual;)	9:00 a.m.
DAVID SCHAEFER, an individual;)	
JORDAN GREEN, an individual; and)	JURY TRIAL, DAY 4 of 5
JAMES MAY, an individual,)	
)	
Defendants.)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: WILLIAM C. RAVA
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1 MR. MANN: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. MANN:

4 Q. Good morning, Mr. May.

5 A. Good morning.

6 Q. Mr. May, I just want to make sure that we're all clear on
7 one thing.

8 Did you have anything to do with the development of the
9 cheat software that is at issue here?

10 A. I did not.

11 Q. Do you recall seeing that cease and desist letter that was
12 dated November 4, 2020, that we've seen here, many times? It
13 was directed to David Schaefer --

14 A. Yes, I recall seeing that.

15 Q. Good.

16 Was that letter ever sent to you?

17 A. It was not.

18 Q. Bungie never sent you a cease and desist letter; is that
19 correct?

20 A. That is correct.

21 Q. Did you ever receive any directive from Bungie to preserve
22 evidence?

23 A. I did not.

24 Q. Now, we had some testimony here, I believe, during the
25 examination yesterday. You were accused of destroying evidence

1 by buying a new computer; do you remember that?

2 A. Yes --

3 MR. MARCELO: Objection, Your Honor. Counsel is
4 testifying.

5 THE COURT: Overruled. You may answer.

6 Q. (By Mr. Mann) Okay. Can you tell the jury why you bought
7 a new computer?

8 A. Okay. So the lawsuit already started at this point.
9 Before we got discovery, I had already had a computer prior to
10 the new computer. This computer was starting to get random blue
11 screens and starting to run slow.

12 I purchased another computer before getting discovery, from
13 Bungie, before I knew that any of this action would be taken for
14 the countersuit.

15 So I bought a new computer, thinking that my computer was
16 corrupted, without having any facts at that point. It was an
17 assumption at that point.

18 Once I got the new computer, I wiped the old computer --
19 the operating system, and then I copied all my -- or, sorry. I
20 copied those files that I needed for the new computer, then I
21 wiped the operating system for the old computer and reformatted
22 it and put a new operating system on there for, like, a clean
23 slate.

24 Q. Mr. May, you preserved your original files, correct?

25 A. Correct, I did.

1 Q. Would there be any reason to destroy those files?

2 A. No.

3 Q. Okay. Now, this was -- well, let me ask you this: Did you
4 ever -- when you changed your computer -- when you bought a new
5 computer, did you have any idea that you could file a
6 counterclaim?

7 A. No, I did not.

8 Q. What changed that?

9 A. Later on -- and I don't remember the exact time in June
10 when we got discovery back -- we received a document that
11 verified that they had been doing this.

12 MR. MANN: Ms. Nassar, if you could pull up Exhibit --
13 this is a plaintiff's exhibit, actually -- 56. And, again, Your
14 Honor, this is admitted into evidence, and we'll show it to the
15 jury.

16 Q. (By Mr. Mann) Is this the document in question?

17 A. Yes, it is.

18 Q. And this is a document that I provided to you after we
19 received it from Bungie in discovery?

20 A. Yes, correct.

21 Q. Again, for the record, this is a document that Bungie has
22 produced?

23 A. Yes.

24 Q. Okay.

25 Now, did you have an opportunity to scan the contents of

1 this document?

2 A. Yes, I have.

3 Q. What, if anything, did you observe or conclude after
4 looking at this?

5 A. I observed that -- Dr. Kaiser testified that anything
6 attached to the process would be in this list. There are system
7 files on here, drivers, that are never attached to the process,
8 that are on here.

9 Q. Okay. Now, how did you feel when you saw this? What was
10 your reaction?

11 A. I felt like my privacy had been invaded.

12 Q. And why was that?

13 A. Because they had gained access to files I did not give
14 permission to.

15 Q. Okay. Now, let's take a look -- and just for the sake of
16 clarity, some of the files we're looking at here do attach to
17 the *Destiny 2* game. You're not denying that, are you?

18 A. Correct.

19 Q. In fact, probably the bulk of these things do attach to the
20 *Destiny 2* game; is that correct?

21 A. Yes, correct.

22 Q. And, again, you admit -- you heard the testimony -- you
23 admit that, on several occasions, you did try to develop a cheat
24 for *Destiny 2*.

25 A. Correct.

1 this file path?

2 A. It is not.

3 Q. Let's do one more, and I think we've beaten
4 this dead horse.

5 A. There's several here. You can see where every time it says
6 AimJunkies binary pound right here, you can just scroll over,
7 and it shows the system -- the system file being loaded.

8 Q. Okay. Now, do you see where it says "backslash, question
9 mark, question mark, C colon"? Does "C" tell you anything?

10 A. That would be any C drive on my hard drive.

11 Q. Okay. Were there any files that were accessed on a drive
12 other than your C drive?

13 A. There probably were, but -- there's several on this list
14 right here, but I don't know what else they could have accessed.

15 Q. Does it appear they've accessed things other than your C
16 drive?

17 A. Yes. Sorry. They've also they accessed my G drive. If
18 you go down to line 89, column 3.

19 Q. Okay. What is -- again, just to clarify for us, what is a
20 G drive?

21 A. That is my external hard drive with all of my work files on
22 it. It also has tax documents and other personal information.

23 Q. Now, does that drive still exist?

24 A. Yes, it does.

25 Q. When you were asked to produce documents, did you produce

1 them from that drive?

2 A. I did.

3 Q. Now, I want to talk a little bit about the measures you
4 take to protect your computer.

5 What sort of security measures do you use on your computer?

6 A. I use the Windows Firewall, and I have password-protected
7 folders.

8 Q. And these are passwords you create?

9 A. Yes.

10 Q. Okay.

11 Now, to access the information we see here on this exhibit,
12 would it be necessary to get past your firewall?

13 A. Yes, it would.

14 Q. Would it be necessary to get past your password
15 protections?

16 A. Yes, it would.

17 Q. How many passwords would it take to get to what we see here
18 on this document?

19 A. Two passwords.

20 Q. Can you explain to the jury how you have that set up?

21 A. So, obviously, there's a Windows login password, and then I
22 have specific passwords set on my folders for all of my private
23 files.

24 Q. Okay. Now, can anyone get into your computer files without
25 your permission?

1 prevent or address potential or actual injury or interference
2 with Bungie's rights, property, operations, users, or others who
3 may be harmed or may suffer loss or damage.

4 A. Yes.

5 Q. Those were all identified to you and what you agreed to?

6 A. In the privacy policy, yes.

7 Q. Mr. May, we heard some testimony about the wiping of your
8 computer.

9 A. Correct.

10 Q. You agree that you wiped your computer and the hard drives,
11 right?

12 A. Yes.

13 Q. You wiped files from your C, D, F, G, and H drives in May
14 of 2022.

15 MR. MANN: Your Honor, I believe that misstates
16 testimony.

17 THE COURT: Well, you can ask the question.

18 The question is a statement rather than a question. Why
19 don't you ask it again, counsel, in a question format.

20 Q. (By Mr. Marcelo) Mr. May, is it correct that you wiped the
21 files from your C, D, F, G, and H drives in May of 2022?

22 A. The external drive was never wiped.

23 Q. And which one is the external drive?

24 A. It was G at that -- I don't know if it was G at that time.
25 I wiped the drive. When you plug it in and unplug it, it

1 changes drives, depending on how many drives you have plugged in
2 at the time.

3 Q. But you agree that you wiped the other drives?

4 A. Yes, because they had nothing related to any of the files
5 related in this case anyway.

6 Q. You say just not the G drive?

7 A. Yeah. That's my external drive, yes.

8 Q. Mr. May, I'm going to direct you to your testimony, March
9 23, 2023.

10 A. Okay.

11 Q. This is page 94, lines 9 through 19.

12 "QUESTION: Okay. Do you still have access to the C, D, F,
13 G, and H drives from your old computer prior to May 2022?

14 "It's all been cleaned since then, since I moved over to
15 the new PC.

16 "So is that a "no," you don't have access to those files
17 anymore?

18 "No. Because I cleaned everything and wiped everything
19 when all this was going on. The only thing I have are all the
20 files on my external drive that still were developed and
21 everything."

22 A. That's correct. Everything from my external drive was kept
23 that related to this case.

24 Q. But all the other files -- you had made some references
25 to -- you thought Bungie, maybe, accessed some other files --

1 those were all wiped?

2 A. All the files I made reference to in this were the files
3 right here. At that time, it was the G drive, but that is my
4 external drive, yes.

5 Q. Mr. May, my question was, you had made reference to that
6 you thought Bungie may have accessed other files on your
7 computer, but those were all wiped, other than the files that we
8 saw on Exhibit 56.

9 A. Yes. Please note that all of this was done before I got
10 any testimony -- or, I mean, any documents from Bungie. I was
11 not planning on filing a counterclaim until I got those
12 documents. I never knew I would file a counterclaim, up until
13 that point. So those files were already gone before this.

14 Q. Mr. May, does your computer processing system or operating
15 system track activities on your computer, do you know?

16 A. It probably does.

17 Q. When you wiped your computer, did you save all that
18 information?

19 A. I wouldn't know what to do -- or how to do that, no.

20 Q. When you got your new computer, you just threw away your
21 old computer?

22 A. Yes. I wiped the old computer and installed a new
23 operating system, and, hopefully, if I needed it again, I could
24 use it.

25 Q. Did Bungie ever have an opportunity to review your old

1 computer?

2 A. No.

3 Q. Did Bungie ever have an opportunity to review the
4 processing system or operating system of that computer?

5 A. They never asked.

6 Q. But you had wiped it, right?

7 A. Yes. But this was all done before I filed my countersuit.
8 I didn't know I was going to file a countersuit at that point.

9 MR. MARCELO: Nothing further, Your Honor.

10 THE COURT: All right. Anything further?

11 MR. MANN: Short redirect, Your Honor.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MR. MANN:

15 Q. Mr. May, I just want to clarify a few points here.

16 Mr. Marcelo said you had no copyrights in your ReClass64;
17 do you recall that?

18 A. Yeah, I do recall that.

19 Q. Okay. Now, do you have a copyright registration in that?

20 A. I do not.

21 Q. Do you believe that you are the author of that work?

22 A. I do.

23 Q. Okay. Do you know what -- that sentence we said, "by
24 operation of 17 U.S.C.," do you know what that means?

25 A. I do not.

1 Bungie service." I think that was the language of the privacy
2 policy.

3 A. Yes.

4 Q. Does the ReClass64.sys file, does that work within the
5 Bungie service?

6 A. It does not.

7 Q. Is that external to the Bungie service?

8 A. It is.

9 Q. Would you interpret that as being something outside of what
10 Bungie said they could look at?

11 A. Yes.

12 Q. Okay. Now, we got into you were wiping files. Again, can
13 you clarify for the jury, one more time, which files you cleaned
14 on your computer?

15 A. So all the files that I clean on my computer are the
16 operating systems and, basically, any game that was installed on
17 there.

18 So before all this happen, before I knew I was going to
19 file a countersuit, I wiped the computer and copied the files
20 over from my hard drive, the external hard drive, and kept those
21 on that drive to the new computer, so that way I could have any
22 copies of all my work files and everything without having to
23 worry about it.

24 And then I'd wipe the old computer, so that way I had a
25 clean slate, and it wouldn't be corrupted anymore.

1 But this was all before I knew I was going to file a
2 counterclaim.

3 I had no idea that the documentation that I would get from
4 discovery would show that they'd been on my computer. So then
5 that's when I filed the counterclaim, but those files were gone
6 before the counterclaim on that previous computer, but the
7 relevant files were still on the new computer because I still
8 had my external drive.

9 Q. Okay. Let's talk a little bit about this claim that you
10 were destroying evidence that would be helpful to Bungie and
11 harmful to you. It's the other way around, isn't it?

12 A. Yes.

13 MR. MARCELO: Objection, Your Honor; misstates
14 testimony from counsel.

15 MR. MANN: I'll rephrase, Your Honor.

16 THE COURT: The jury is to disregard the last question
17 and answer.

18 Ask another question.

19 MR. MANN: Certainly.

20 Q. (By Mr. Mann) Mr. Marcelo asked you, if you had those
21 files, it would show who accessed your computer when, correct?

22 A. Could you repeat that question?

23 Q. Sure.

24 Mr. Marcelo, I don't mean to put words in his mouth, I
25 understood the question to be that, if you had retained those

1 original drives, you would have data showing when files were
2 accessed and by whom, or something to that effect. Do you
3 recall that question?

4 A. I do.

5 Q. Okay. Now, if you had that information, wouldn't that show
6 when Bungie was accessing your computers?

7 A. I would assume so, yes.

8 Q. And wouldn't that be helpful to your case?

9 A. It would be.

10 Q. Would it make sense for you to destroy information and
11 evidence that would be helpful to your case?

12 A. No.

13 Q. And, again, this all happened before you saw that green
14 sheet exhibit that showed -- that made you think that you had a
15 counterclaim, correct?

16 A. Yes, correct.

17 MR. MANN: No further questions, Your Honor.

18 THE COURT: Anything further?

19 MR. MARCELO: Very briefly.

20 RECROSS-EXAMINATION

21 BY MR. MARCELO:

22 Q. Mr. May, you used the ReClass driver tool to help you see
23 memory in *Destiny 2*, right?

24 A. I used it to get an elevated handle to ReClass, but it did
25 not attach to the game itself, no.

1 any of the hash that we see on this document?

2 A. No, I don't believe so.

3 Q. Okay. Now, you testified you prepared this document,
4 correct?

5 A. Yes, I did.

6 Q. Okay. And you said this is a summary or a compilation of
7 the information you received from James May's computer?

8 A. No, I never said that.

9 Q. The question I have is: Is this the entirety of everything
10 that was ever obtained off of Mr. May's computer, or is there
11 other information that does not appear on this document?

12 A. These are rows in our banned database. This is not
13 information obtained off of James May's computer.

14 Q. Is this the entirety of the information that was obtained
15 off of James May's computer, or is there other information?

16 A. There is associated metadata.

17 Q. But it doesn't appear on this, correct?

18 A. That's correct.

19 Q. We're in the homestretch here. I just want to clarify.

20 Have you yourself ever created a cheat?

21 A. No.

22 MR. MANN: No further questions, Your Honor.

23 THE COURT: Any further questions, counsel?

24 REBUTTAL REDIRECT EXAMINATION

25 BY MR. RAVA: